

# CALIFORNIA ACUPUNCTURE BOARD

444 North 3<sup>rd</sup> Street, Suite 260, Sacramento, CA 95814-0226  
Phone: (916) 445-3021 / FAX: (916) 445-3015  
E-mail: acupuncture@dca.ca.gov Web: www.acupuncture.ca.gov

State of California  
Department of Consumer Affairs  
Arnold Schwarzenegger, Governor



(Approved May 26, 2005)

## ACUPUNCTURE BOARD MEETING MINUTES

March 10 & 11, 2005  
Contractors State License Board  
Sacramento, CA

### Full Board March 10, 2005

#### **MEMBERS PRESENT**

Shari Asplund, Chair  
Joan C. Chang, L.Ac.  
Justin Tin  
Steven Tan, M.D.  
Kenny G. Cherng, L.Ac.  
Larry Yee

#### **STAFF PRESENT**

Marilyn Nielsen, Executive Officer  
Don Chang, Legal Counsel (out going)  
LaVonne Powell, Legal Counsel (in coming)  
Janelle Wedge, Administrative Coordinator  
Christie Loftin, Examination Coordinator  
Nancy Molinar, Education Coordinator

#### **MEMBERS ABSENT**

#### **GUEST LIST ON FILE**

#### **1. Call to Order and Establishment of a Quorum (S.Asplund, Chair)**

Chair Shari Asplund called the Acupuncture Board meeting to order at approximately 8:40 a.m. Roll was taken, a quorum was established.

#### **2. Welcome and Introduction of New Board Members**

Ms. Asplund introduced the three new Board members and welcomed them to the Board. New members introduced were Larry Yee, public member; Kenny G. Cherng, L.Ac, professional member; and Steven Tan, M.D., L.Ac, professional physician member.

#### **3. Chair's Report – Shari Asplund**

Ms. Asplund reported that due to a lack of a quorum of members, it had been nine months since the Board last met. She indicated there have been many issues pending that need to be resolved, including a large number of enforcement cases where decisions need to be rendered. Ms. Asplund commended the three members whose terms expired in June 2004 and praised them for their dedication and hard work on behalf of the Board. The three members being, Pei Li Zhong-Fong, L.Ac, professional member and Board Chair; Michael Eng, public member and Board Vice-Chair; and Min Mae Chang, public member. Ms. Asplund indicated the Little Hoover Commission's report released in September 2004 brought some surprises with the areas it focused on, but contained findings and recommendations the Board will review and take into consideration when making decisions. Ms. Asplund also reported she attended the January 4, 2005 Joint Committee sunset review hearing on the Board. She was disheartened on the issues the Committee focused on and felt the Board has been responsive and aggressive on resolving the issues raised and that this would be more thoroughly discussed later in the meeting.

#### **4. Executive Officer's Report – Marilyn Nielsen**

Ms. Nielsen welcomed the new members and requested they submit a brief bio for the Board's website. She introduced the staff in attendance and briefly described their job responsibilities. She also pointed out that while the executive officer was the member's primary contact, but if unavailable contact Janelle Wedge the Administrative Coordinator. She reported that the revised Consumer Brochure was completed and released at the end of June 2004. When revising the brochure, the Board took into consideration the concerns expressed by the Little Hoover Commission and Joint Committee on Boards, Commissions and Consumer Protection. Revisions included addressing single-use needles, herb-drug interactions, a caution to keep all health care practitioners that a patient is being treated by apprised of all products they are taking, and addresses the research findings from the National Institute of Health (NIH). The Board's Disciplinary Guidelines are in the process of being revised, which when complete will be reviewed by legal counsel and presented to the Board for consideration. A program assessment is being conducted in order to move the Board's licensee's data files into a new program known as the Applicant Tracking System (ATS), which when implemented would allow the Board to offer website on-line license renewal capability. This program and capability should be implemented in 2006. Ms. Nielsen advised that the Chair would be making her 2005 committee assignments and recommended the members forward their preferences for the committees they are interested in serving on as soon as possible. She reminded the members that per Business and Professions Code section 453, new members are required to attend the Department's Board Member Orientation Training within one year of their appointment date. The Department has scheduled four training sessions in 2005 – April 8 in Los Angeles, June 15 in Sacramento, September 21 in Southern California, and December 7 in Sacramento. She also reminded the members that their Annual Statement of Economic Interest, Form 700 was due by April 1, 2005.

Ms. Nielsen introduced Nancy Hall, Department of Consumer Affairs Deputy Director for Board Relations. Ms. Hall welcomed the new members and stated that Ms. Nielsen was one of the best executive officers the Department has and a wonderful person and pure delight to work with. She told the members that she was available at any time for anything they needed.

#### **5. Approval of June 7, 2004 Meeting Minutes**

**JUSTIN TIN MOVED AND LARRY YEE SECONDED THE MOTION  
TO APPROVE THE JUNE 7, 2004 MINUTES AS AMENDED.  
PASSED UNANIMOUSLY**

#### **6. Administrative Business – (Discussion/Action)**

##### **a. Education Curriculum Rulemaking File (California Regulatory Notice Register #Z-03-0520-10) Amending Title 16, California Code of Regulations (CCR) Sections 1399.415, 1399.416, and 1399.436, and Adding Sections 1399.434 and 1399.435**

##### **1. Department of Consumer Affairs Approval August 2004**

##### **2. Office of Administrative Law's Approval October 5, 2004**

Ms. Nielsen recapped the extensive process the 3,000-hour curriculum regulations had gone through prior to approval. The Office of Administrative Law (OAL) published the original notice for the proposed regulations for CCR Sections 1399.415, 1399.416, 1399.434, 1399.435 and 1399.436 May 30, 2003. The public hearing was held July 14, 2003, sections 1399.434 and 1399.435 proceeded through two amendment processes in October 2003 and March 2004 before finally being filed with the Department in May 2004. On August 23, 2004, DCA Director Charlene Zettel approved the Board's proposed amendments to the regulations to establish the 3,000-hour curriculum program

effective January 1, 2005, and the final rulemaking file was submitted to OAL on that same date. OAL approved the final regulations and filed them with the Secretary of State on October 5, 2004. Ms. Nielsen reminded the Board that Executive Order S-2-03, dated November 17, 2003, further delayed the regulations with the Administration's 180-day review on all pending regulations. The Administration officially released the Board's regulations and extended authorization for the Board to proceed on March 3, 2004. Ms. Nielsen commented that this rulemaking file was one of the most lengthy and arduous regulatory processes she has ever completed. That the regulatory file extended over an eighteen month time frame proceeded by a six year review and development period by a competencies task force.

**3. Distribution of Notice of Approved Curriculum Regulations to Approved Schools and General Mailing List**

Ms. Nielsen reported the Director, in her August 2004 approval letter to the Board, made a special point of addressing the controversial history of this regulatory proposal that had included allegations that the proposed amendments to the curriculum regulations would result in an expansion of the scope of practice for a California licensed acupuncturist. However, she went on to explain that after a careful review by the Department, she believed that the proposed curriculum regulations do not expand an acupuncturist's scope of practice. Ms. Nielsen explained, per the Directors request to prevent any confusion or misuse by the public or the profession with regard to these proposed regulations, the Board purposefully included a statement in its distribution notice that the curriculum regulations were adopted to prepare newly licensed acupuncturists to operate safely and effectively in their acupuncture and Oriental medicine practice, and that the new educational requirements do not expand the scope of authority as currently authorized by Business and Professions Code section 4927 and 4937.

**4. Request to Approved Schools for Verification of Implementation**

Ms. Nielsen informed the members that included in the distribution notice as discussed in No. 3 above, all Board approved schools were also sent a curriculum worksheet form for the schools to provide by the end of 2004 verification of compliance of the new educational requirements defined in CCR Sections 1399.415, 1399.416, 1399.434, 1399.435 and 1399.436. To date, all but two out of the thirty approved schools have provided verification of compliance. The two schools in non-compliance are Oregon College of Oriental Medicine and New York College for Health Professions. Staff is still reviewing the documents submitted by the schools, however those reviewed have all had some type of revision required. Ms. Nielsen indicated the primary issues have been the duplication of hours and school catalogs do not encompass all the areas as reflected in the new requirements, and further review will be necessary. Ms. Molinar added the schools have been very cooperative with the Board to identify curriculum courses and hours to comply with the new law.

**Public Comment: Tom Haines, Ph.D., Pacific College of Oriental Medicine**

**(PCOM)**, indicated the schools have been trying to comply with the Board's request to verify curriculum course and hours for the new 3,000 program, but it has been difficult because the new curriculum categorization was established from a practice standpoint, not an educational standpoint. He reminded the Board that in 2003 the colleges had submitted a proposed curriculum reorganization plan that kept academic content and hours in tact, but simply reorganized categories to better fit existing college curricula and required reporting processes. Ms. Nielsen asked Dr. Haines if the colleges would resubmit for the Board's reconsideration the proposed reorganization plan with a cover letter of explanation that would help the new members understand the colleges request.

Dr. Haines agreed to do so.

**b. California Performance Review and Governor's Reorganization Plan 1 – Reforming California's Boards and Commissions**

Ms. Nielsen explained, in February 2004, the Governor created the California Performance Review (CPR) and established groups of experts who held lengthy reviews and evaluations of current structure, performance and efficiencies of agencies of government. The Findings and recommendations were released in August 2004 in the 3,000 page CPR. The CPR contained over 1,200 recommendations and dramatic reforms to government, which included the elimination of 119 boards, however the Acupuncture Board, along with other health care boards, were recommended to remain the same structurally, but moved under the authority of Department of Health Services. Following the release of the CPR, a second phase review, which was conducted by State and Consumer Services Agency and the Department of Consumer Affairs (DCA), was released in January 2005 as the Governor's Reorganization Plan 1 recommending elimination of 88 boards and commissions, which included all licensing boards under DCA, and transferring their functions and decision authority to the Director of DCA. The Little Hoover Commission, in a public hearing on the Governor's Reorganization Plan questioned whether DCA was equipped to take on the responsibilities of the boards. Following the Commissions hearings and substantial opposition, the proposal was formally withdrawn by the Governor in February 2005, concluding the proposal would benefit from further review.

**c. Business and Professions Code Section 4934.1 – Little Hoover Commission's Study and Evaluation Requirements on the Scope of Practice and Educational Requirements of an Acupuncturist, School Approval Process and Use of National Exam.**

**1. Little Hoover Commission – Regulation of Acupuncture September 2004 Report**

Ms. Nielsen recapped the six findings and recommendations identified by the Little Hoover Commission (LHC) in their September 2004 report. **Finding 1**, recommended the role of acupuncturists in the health care system should be clarified in statute, by keeping licensure focused on traditional Oriental medicine, defining primary care, authorize and define traditional Oriental diagnosis, require disclosure of critical information, and allow for acupuncture-only licensure. **Finding 2**, recommended the number of educational hours should not be increased, educate within scope of practice, devote adequate curriculum to patient safety, and teach within area of expertise. **Finding 3**, recommended increasing the number of continuing education hours required of currently licensed practitioners, specify specific courses, and require testing for patient safety related material. **Finding 4**, recommended the Board should continue administering the California Acupuncture Licensing Examination, implement must-pass modules of critical components for safe practice, continue contracting out for exam administration, and develop a strategy for implementing internships. **Finding 5**, recommended California should rely on the Accreditation Commission for Acupuncture and Oriental Medicine in lieu of its school approval process, develop a mechanism to ensure state-specific curriculum standards are met, and require schools to document that standard. **Finding 6**, recommended the Board be a strong consumer advocate, develop a patient safety strategy, develop consumer protections for herb products, and restructure the Board to a public member majority. Expanded information on LHC's findings and recommendations can be found in *Little Hoover Commission, Regulation of Acupuncture: A Complementary Therapy Framework: September 2004* publication.

Ms. Nielsen indicated that not having a full complement of Board members to respond to these findings and recommendations, each issue was addressed with the historic position of previous boards in its October 8, 2004 letter to the Joint Committee on Boards, Commissions and Consumer Protection.

2. **Ratification of Board's October 8, 2004 Response to Joint Committee on Boards, Commissions and Consumer Protection, addressing the Little Hoover Commission's September 2004 Findings and Recommendations**

**SHARI ASPLUND MOVED AND JOAN CHANG SECONDED THE MOTION TO RATIFY THE BOARD'S OCTOBER 8, 2004 RESPONSE TO THE JOINT COMMITTEE ON BOARDS, COMMISSIONS AND CONSUMER PROTECTION, ADDRESSING THE LITTLE HOOVER COMMISSION'S SEPTEMBER 2004 FINDINGS/RECOMMENDATIONS. PASSED UNANIMOUSLY**

**d. Board's 2004/2005 Sunset Review**

1. **Ratification of Board's September 1, 2004 Sunset Review Report**

**STEVEN TAN MOVED AND KENNY CHERNG SECONDED THE MOTION TO RATIFY THE BOARD'S SEPTEMBER 1, 2004 SUNSET REVIEW REPORT. PASSED UNANIMOUSLY**

2. **Joint Committee on Boards, Commissions and Consumer Protection – Background Paper for Acupuncture Board's January 4, 2005 Hearing (released December 20, 2004)**

Ms. Nielsen recapped the ten issues identified in the Joint Committee on Boards, Commissions and Consumer Protection's Background Paper for the Acupuncture Board. **Issue No. 1** - questioned whether the Board should be transformed into a bureau under the Department of Consumer Affairs or fully reconstituted. **Issue No. 2** - related to an acupuncturist scope of practice, status as primary health care professionals, educational standards and a practitioner's ability to diagnose. **Issue No. 3** - related to public safety issues, single-use needles and herb safety. **Issue No. 4** - related to the use of assistants. **Issue No. 5** - addresses other professions by virtue of their scope of practices can perform acupuncture. **Issue No. 6** - related to a faculty member appointee. **Issue No. 7** - related to Board appointments, lack of a quorum and the Board's vacancy problem. **Issue No. 8** - related to the continuing education program and efficiency of the Board's random audit process. **Issue No. 9** - related to the Board's school approval process versus the national accreditation process. **Issue No. 10** - related to the California Acupuncture Licensing Examination versus use of the national examination. Expanded information on the issues and related discussion can be found in the Joint Committee's Background Paper for the Acupuncture Board's January 4, 2005 hearing document.

Ms. Nielsen indicated the Board provided the Joint Committee a written response on January 3, 2005, to each of the issues raised in the background paper.

3. **Joint Committee on Boards, Commissions and Consumer Protection – 2005 Cross-Cutting Issue for all Boards under the Department of Consumer Affairs**

Ms. Nielsen explained the Joint Committee on Boards, Commissions and Consumer Protection's 2005 cross cutting issues for all boards within the Department of Consumer Affairs related to the board's loans made to the General Fund in Fiscal Years 2002/2003 and 2003/2004 amounting to over \$200 million from nineteen board special funds. The General Fund borrowed \$1.5 million from the Acupuncture Board's reserves in Fiscal Year 2003/2004. The Cross-Cutting Issues report pointed out that case law (*California Medical Association v. Hayes*) demonstrates that outright transfers of money from special

funds to the General Fund are illegal. The report further reflected that these loans could jeopardize board operations essential to public safety, raising serious policy questions and concerns of board programs, such as enforcement, being compromised. The report also pointed out that the Department of Finance promised to repay the money, plus interest, if and when the board needed the funds, but there was no definition of who determines the need or by what means the loan would be repaid. Ms. Nielsen reported that as of July 30, 2004 only one loan had been repaid, that being the Contractors State License Board Fiscal Year 2002/2003 loan of \$11 million. The Joint Committee was concerned if a board's need is based upon benchmarks like possible insolvency or precarious reserving, the only way a board could guarantee of qualifying for repayment is to try and act in a fiscally irresponsible manner and to do so in a way that would escape the oversight of the Department of Finance.

#### **4. Ratification of Board's January 3, 2005 Response to Joint Committee's Sunset Background Paper**

**LARRY YEE MOVED AND JOAN CHANG SECONDED THE MOTION TO RATIFY THE BOARD'S JANUARY 3, 2005 RESPONSE TO THE JOINT COMMITTEE ON BOARDS, COMMISSIONS AND CONSUMER PROTECTION'S BACKGROUND PAPER FOR THE ACUPUNCTURE BOARD'S JANUARY 4, 2005 HEARING. PASSED UNANIMOUSLY**

#### **5. Joint Committee's January 4, 2005 Acupuncture Board Sunset Hearing**

Ms. Nielsen reported the January 4, 2005 sunset review hearing started in a very accusatory tone with the Board, but that it was her opinion that it concluded with good communication and a better understanding of the Board's positions on key issues. Ms. Asplund added she felt the Joint Committee was patient and intently listened to the responses of the Board and complimented Senator Figueroa for being the only member of the Committee that stayed to listen all day. Mr. Yee suggested that the Board distribute a press release following such hearings to ensure the impressions of the Board are known.

**Public Comment: Tom Haines, Ph.D., PCOM,** said he attended the hearing and was pleased at how the profession presented itself this time.

#### **6. Joint Committee's January 10, 2005 Preliminary Staff Recommendations**

Ms. Nielsen reported the Joint Committee released a document on January 10, 2005 identifying preliminary staff recommendations on the 10 issues raised in the Committee's Background Paper, they wanted to see the Board do. **Issue No.1 - Staff Recommendation:** that the Board be reconstituted and that if the Board did not swiftly respond to the five other recommendations in the report, particularly those that require immediate, emergency regulations, staff would support making the Board a bureau, giving the Department of Consumer Affairs the ability to hire a new executive director. **Issue No. 2 - Staff Recommendation:** scope of practice for an acupuncturist should be retained as is, clarify diagnosis in emergency regulations, no additional educational hours should be implemented at this time, and define primary health care and memorialize in emergency regulations. **Issue No. 3 - Staff Recommendation:** promulgate as emergency regulations requiring sterile single-use disposable needles and no recommendation on herb safety. **Issue No. 4 - Staff Recommendation:** regarding use of assistants, promulgate into emergency regulations that no non-licensee should be performing acupuncture. **Issue No. 5 - Staff Recommendation:** immediately implement an action plan to meet with other boards of professions with overlapping jurisdiction (i.e.,

physicians, podiatrists, and dentists). **Issue No. 6 - Staff Recommendation:** regarding the faculty member appointee – staff had no additional recommendation. **Issue No. 7 – Staff Recommendation:** regarding board appointments, lack of quorum and vacancy problems – staff had no additional recommendation. **Issue No. 8 – Staff Recommendation:** regarding the continuing education program – staff indicated the Board’s proposed regulatory amendments to the continuing education program have much merit, but clearly need to be further elaborated in regulatory language. **Issue No. 9 – Staff Recommendation:** regarding the school approval process – staff had no additional recommendation. **Issue No. 10 – Staff Recommendation:** regarding the California Acupuncture Licensing Examination versus use of the national examination – staff had no additional recommendation.

Ms. Nielsen introduced David Link, Staff Consultant to the Joint Committee on Boards, Commissions and Consumer Protection, who briefly discussed staff recommendations. Committee issues requiring discussion and possible action are individually addressed below.

**7. Proposed Regulatory Amendments to Title 16, California Code of Regulations to Comply with Recommendations of Joint Committee**

**a. Amend Section 1399.403 – definition of primary health care and adding diagnosis.**

Ms. Nielsen reported per the request of the Joint Committee a proposed definition of primary health care was developed and included in the members and public meeting packets that included diagnostic and treatment services and initiates referrals to other health care practitioners. However, the definition included in the meeting packets was unacceptable to the Joint Committee staff earlier this week and she has been working with the Joint Committee staff to finalize an acceptable definition to present to the Board this day. Two definition versions were distributed to the members for consideration. One version that stated: ‘Primary care provider’ means that any patient may see an acupuncturist without first having to obtain a referral from any physician or other health care professional, which was the only acceptable version of many reviewed by Joint Committee staff. Don Chang, Legal Counsel, distributed a second definition version containing the term ‘diagnosis,’ but not reviewed by the Joint Committee staff as yet and just distributed.

**Public Comment: Ron Zaidman, Five Branches Institute,** referring to Mr. Chang’s version suggested adding ‘and Oriental medicine’ with acupuncture. In response, **Mr. Chang** recommended those terms be dropped and add ‘treatment as prescribed by the Acupuncture Practice Act,’ which would encompass Business and Professions Code Sections 4927 and 4937. **Ted Priebe, L.Ac, National Oriental Medicine Accreditation Agency (NOMAA),** taking exception to the definition at all, discussed the importance to reflect one universal physiology. **Yu You, L.Ac, South Baylo University (SBU),** expressed concern that there is already an acceptable definition of primary health care recognized in both the Workers Compensation System and MediCal, and why we have a different definition. **Michelle Lau, L.Ac, Council of Acupuncture and Oriental Medicine Association (CAOMA), Hugh Morison, L.Ac, Life University and Bill Mosca, Acupuncture and Integrated Medicine Specialists (AIMS),** suggested the flexibility to work with both definitions.

**LARRY YEE MOVED AND JOAN CHANG SECONDED THE MOTION TO ENDORSE BOTH THE FOLLOWING DEFINITIONS OF PRIMARY HEALTH CARE, WITH PREFERENCE FIRST TO THE VERSION SUBMITTED BY DON CHANG, LEGAL COUNSEL,**

**WHICH CONTAINED THE TERM ‘DIAGNOSIS’ –AND- IF UNACCEPTABLE TO THE JOINT COMMITTEE TO AUTHORIZE THE EXECUTIVE OFFICER THE FLEXIBILITY TO WORK WITH BOTH DEFINITIONS TO DEVELOP A DEFINITION ACCEPTABLE TO THE COMMITTEE.**

**FIRST VERSION: CALIFORNIA CODE OF REGULATIONS SECTION 1399.403. DEFINITIONS – THE PHRASE ‘PRIMARY HEALTH CARE PROFESSION,’ AS USED IN BUSINESS AND PROFESSIONS CODE SECTION 4926, SHALL MEAN A PROFESSION WHICH, WITHOUT HAVING TO FIRST OBTAIN A REFERRAL FROM A PHYSICIAN, CAN PROVIDE A DIAGNOSIS OF A PATIENT FOR THE PURPOSE OF PROVIDING TREATMENT AS PRESCRIBED BY THE ACUPUNCTURE ACT.**

**SECOND VERSION: ‘PRIMARY CARE PROVIDER’ MEANS THAT ANY PATIENT MAY SEE AN ACUPUNCTURIST WITHOUT FIRST HAVING TO OBTAIN A REFERRAL FROM ANY PHYSICIAN OR OTHER HEALTH CARE PROFESSIONAL.**

**PASSED UNANIMOUSLY**

**A SECOND MOTION WAS MADE BY SHARI ASPLUND AND JOAN CHANG SECONDED THE MOTION THAT IF THE DEFINITION FOR PRIMARY HEALTH CARE PROFESSIONAL CONTAINING THE TERM ‘DIAGNOSIS’ IS UNACCEPTABLE TO THE JOINT COMMITTEE AUTHORIZE THE EXECUTIVE OFFICER THE FLEXIBILITY TO WORK WITH THE BOARD’S LEGAL COUNSEL AND THE JOINT COMMITTEE TO REVISE THE DEFINITION OF PRIMARY HEALTH CARE, IN ADDITION TO DEVELOPING A DEFINITION OF DIAGNOSIS ACCEPTABLE TO THE COMMITTEE.**

**PASSED UNANIMOUSLY**

- b. Amend Sections 1399.450, 1399.451 and 1399.454 – requiring single-use disposable needles only.**

**LARRY YEE MOVED AND JOAN CHANG SECONDED THE MOTION TO ADOPT PROPOSED REGULATORY AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS SECTIONS 1399.450, 1399.451, AND 1399.454, REQUIRING ONLY SINGLE-USE DISPOSABLE NEEDLES AND AUTHORIZED THE EXECUTIVE OFFICER TO PROCEED WITH FILING OF AN EMERGENCY REGULATION.**

**PASSED UNANIMOUSLY**

- c. Amend Article 8, Sections 1399.480, 1399.481, 1399.483, 1399.484, 1399.485, 1399.486, 1399.487, 1399.488, 1399.489, 1399.489.1 – relating to the continuing education program.**

**Public Comment: Sandy Carey, CAOMA and Jack Miller, PCOM, each spoke to the proposed amendments in Section 1399.485. Mr. Miller suggested that instead of designating two years experience is restrictive that requiring that the instructor is qualified to teach the specific course material would guarantee quality in an instructor. Mr. Miller also discussed**



the proposed amendments in Section 1399.483 and questioned the need to restrict the discussion or sales of products during a course.

**JOAN CHANG MOVED AND STEVEN TAN SECONDED THE MOTION TO ADOPT THE PROPOSED REGULATORY AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS SECTIONS 1399.480, 1399.481, 1399.483, 1399.484, 1399.485, 1399.486, 1399.487, 1399.488, 1399.489, 1399.489.1, RELATING TO THE CONTINUING EDUCATION PROGRAM AND AUTHORIZED THE EXECUTIVE OFFICER TO PROCEED WITH FILING OF A REGULATORY NOTICE WITH THE OFFICE OF ADMINISTRATIVE LAW. PASSED UNANIMOUSLY**

**8. Joint Committee Issues Requiring Further Board Discussion/Action**

**a. Use of Assistants**

Ms. Asplund asked David Link, Joint Committee Consultant, why the Committee did not support the findings of the Board as reported in its September 2004 Sunset Review Report. Mr. Link explained that the proposal did not contain defined tasks that the assistant could or could not perform. Ms. Asplund explained that those specifics were to be defined by a task force established by the Board once the use of an assistant was authorized in law. Mr. Chang drew the Board's attention to the standards and training documents submitted to the Board to assist in defining the scope of work for an assistant from Morrison and Forester. He recommended appointing a committee to address the specific scope of work issues for an assistant. He further stated the legal office could prepare a legal analysis of assistants and their legal roles defined in current law.

**Public Comment: Ron Zaidman, Five Branches Institute,** suggested there could be a correlation made between the use of assistants and the residency program.

**JOAN CHANG MOVED AND LARRY YEE SECONDED THE MOTION TO ASSIGN THE BOARD'S ENFORCEMENT COMMITTEE THE RESPONSIBILITY TO REVIEW AND DEFINE POSSIBLE USE OF ASSISTANTS TO BRING BACK TO THE BOARD. PASSED UNANIMOUSLY**

**b. Other Professions with Overlapping Jurisdiction**

Ms. Asplund asked David Link, Joint Committee Consultant, what the Committee's expectations and goals were regarding this issue. Mr. Link indicated that the Committee wants the Board to exert the effort to reach out to the other boards, to meet with them and have an open dialog of the concerns the Board has expressed in its written reports to the Joint Committee regarding their limited or no training in acupuncture. Ms. Asplund indicated in the past there has been a lack of interest or commitment from other professions to work with the Board on this issue. Mr. Link responded that if other professions who are allowed to practice acupuncture were not willing to work with this Board, he would be willing to statutorily require them to do so. Mr. Chang said he felt the Committee wanted the Board to deal Board with Board not EO with EO. He also suggested the Board could make the first contact with each of the other boards in a letter identifying the current educational standards and this Board's willingness to work with them to identify weaknesses in the their current requirements for the health and safety of the patient. Ms. Nielsen pointed out that in 1993 Hawaii became the only state to not allow physician and dentist exemption status when the

legislature stepped in and recognizing the need for a complete educational training, revoked their exemption status.

**Public Comment: Ted Priebe, NOMAA**, said that NOMAA has developed a competency-based program that would be appropriate for a physician. **Sandy Carey, CAOMA**, stated the legislature needs to introduce a legislative bill requiring only a licensed acupuncturist can perform acupuncture. **Yu You, L.Ac, SBU**, she agrees that the full training should be required of anyone performing acupuncture in California. **Michelle Lau, CAOMA**, indicated this is a serious issue that should be addressed by the legislature and the concern for public harm should be a priority. She emphasized that what the Dental Board was trying to do by reducing their required hours from 80 to only 24 is a serious concern. **Hugh Morison, Life University**, stated that just because other professions can insert needles, without adequate training there is a risk to the public and that Oriental medicine is here to treat health need to the public, not a back door way for other professions to practice it by virtue of their scope. The short courses many physicians take, are totally inadequate compared to the point location training an acupuncturist gets.

**SHARI ASPLUND MOVED AND STEVEN TAN SECONDED THE MOTION TO DIRECT THE EXECUTIVE OFFICER TO PREPARE LETTERS TO THE OTHER PROFESSIONS WITH OVERLAPPING JURISDICTIONS (I.E., PHYSICIANS, PODIATRIST, AND DENTIST) SPECIFICALLY ADDRESSING THE BOARD'S CONCERNS, REQUIREMENTS, COMMITMENT TO WORK WITH OTHER BOARDS TO EVALUATE TRAINING TO IMPROVE CONSUMER PROTECTION. PASSED UNANIMOUSLY**

**c. School Approval/Accreditation Process**

Ms. Asplund commented that the Little Hoover Commission recommended the Board look to the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) accreditation process of acupuncture schools, but the Joint Committee preliminary staff recommendations have made no such suggestion.

**Public Comment: Ted Priebe, L.Ac, NOMAA**, opposed naming any specific accrediting agency and that any accrediting agency approved by the U.S. Department of Education should be recognized and that accreditation is a voluntary process and no replacement for state approval and oversight. **Yu You, L.Ac, SBU**, stated that SBU has applied for WASC accreditation and recently WASC performed their site visit of the school. She disagrees that a master level should be adequate for entry level. **Michelle Lau, L.Ac, CAOMA**, that any accreditation agency should be qualified to require California's program and that ACAOM was not qualified, and every state requirements and scope of practices are different.

The directive of the Board was to wait for final findings and recommendations of the Joint Committee before taking a position on the Board's school approval process versus the national accreditation process.

**d. California Acupuncture Licensing Examination (CALE)**

The Joint Committee preliminary staff recommendations made no recommendation on this issue at this time. Likewise, the Board took no action at this time.

**9. Legislative Bills Introduced by Assemblyman Leland Yee Relating to the Acupuncture Profession**

Ms. Nielsen reported Assemblyman Leland Yee just introduced five legislative bills relating to the practice of acupuncture. The first, being AB 1113 amending Business and Professions Code (B&P) Section 4927 adding diagnosis.

**Public Comment: Brian Fennen, L.Ac, CAOMA,** Assemblyman Yee's bills were just introduced this week. He said it was his understanding that AB 1113 was scheduled to be amended prior to the first reading and that CAOMA has not had a chance to review the bill or take a position on it at this time.

**SHARI ASPLUND MOVED AND LARRY YEE SECONDED THE MOTION TO TAKE A SUPPORT POSITION ON AB 1113 ADDING THE TERM DIAGNOSIS AND EVALUATE FINAL LANGUAGE AFTER AMENDED.  
PASSED UNANIMOUSLY**

Ms. Nielsen explained AB 1114 amends B&P Code Section 4945 increasing the required number of continuing education hours that a licensee must complete every two years from 30 to 50 hours and defines that five hours will be dedicated to public health and safety.

**Public Comment: Brian Fennen, L.Ac, CAOMA,** indicated that the general profession was not surveyed regarding the proposed increases in AB 1114 and CAOMA has not taken a formal position on AB 1114 as yet.

**STEVEN TAN MOVED AND KENNY CHERNG SECONDED THE MOTION TO TAKE A WATCH POSITION ON AB 1114 INCREASING THE CONTINUING EDUCATION HOURS AN ACUPUNCTURIST MUST COMPLETE FROM 30 TO 50 EVERY TWO YEARS.  
PASSED UNANIMOUSLY**

Ms. Nielsen explained AB 1115 will add B&P Code Sections 4950 through 4954 establishing an acupuncture assistant and provides that the Board would have the authority to establish in regulations the standards need of the assistant. Legal Counsel recommended AB 1115's language needs to provide more clarification and specifics of what supportive services are (i.e., level of service).

**Public Comment: Brian Fennen, L.Ac, CAOMA,** stated that AB 1115 was going to be amended, but that CAOMA supports the use of assistants.

**LARRY YEE MOVED AND JOAN CHANG SECONDED THE MOTION TO TAKE A SUPPORT IN CONCEPT POSITION ON AB 1115 THAT DEFINES THE USE OF ASSISTANTS AND EVALUATE FINAL LANGUAGE AFTER AMENDED.  
PASSED UNANIMOUSLY**

Ms. Nielsen explained AB 1116 amends B&P Code Sections 4935 and 4938 to establish a postgraduate residency requirement that would provide the graduate a short-term practice in a program outside of the school clinic prior to taking the licensing

examination. Mr. Tan was concerned about the whole level of regulation this would be adding to the Board and was unclear to the value added by the requirement.

**Public Comment: Jack Miller, President, PCOM**, recommended the Board oppose this bill. He reminded the Board that the Little Hoover Commission's report said the current educational standards are adequate. He expressed concern that there was no way to regulate or monitor how individual practices are done and the impact such regulatory oversight would put on the Board. He also pointed out the student could already continue to practice in the school clinic and that current clinical training is adequate in the schools. He felt this only established more barriers to practice and that graduating students should be studying for their licensing examination rather than practicing. He recommended the Board evaluate whether this proposal was worth the extra time, costs and regulation oversight. **Ted Priebe, L.Ac, NOMAA**, stated while the concept is good how were the competencies going to be measured in these types of settings. **Dr. Reed Phillips, President, Southern California University of Health Sciences (SCUHS)**, indicated that Assemblyman Yee's office contacted SCUHS to review the types of programs available in the chiropractic education. In the chiropractic program at SCUHS the postgraduate residency program is on a voluntary basis only and not required by the state, and that the school is responsible for establishing the practices the graduate is placed in and the school oversees the preceptorships. **Yu You, L.Ac, SBU**, felt we needed the same type of model as medical model. **Michelle Lau, L.Ac, CAOMA**, indicated the profession supports in concept. **Hugh Morison, L.Ac, Life University**, said he also supported in concept. **Bill Mosca, AIMS**, stated that while AIMS supports residency programs in concept, they have a concern with AB 1116 and that the value of such a program is unclear at this time. AIMS was concerned this additional requirement may cause a graduate to have a delay in when they planned on taking the licensing examination. He suggested that if the clinical training in the schools was a problem, then fix that problem. **Tom Haines, Ph.D., PCOM**, stressed that California has the best education across the country and it is adequate. The current educational structure works and feels AB 1116 is inappropriate at this time. **Ted Priebe, L.Ac, NOMAA**, reminded the Board this was not about the number of hours a student completes, it is about educational competencies. **Jack Miller, President, PCOM**, closed with stating if the education is such a problem then it is probably a realistic problem for the current licensees who graduated from a lesser curriculum program.

**JOAN CHANG MOVED AND KENNY CHERNG SECONDED THE  
MOTION TO TAKE A WATCH POSITION ON AB 1116  
IMPLEMENTING A POSTGRADUATE RESIDENCY  
REQUIREMENT AND EVALUATE FINAL LANGUAGE AFTER  
AMENDED.  
PASSED UNANIMOUSLY**

Ms. Nielsen explained AB 1117 amends B&P Code Sections 2075, 3642, 4926, 4935, 4937 and 4939 changing the term 'Oriental Medicine' to 'Asian Medicine.'

**Public Comment: Brian Fennen, L.Ac, CAOMA**, stated CAOMA doesn't support it as it is a new concept, but an alternative is to have both 'Oriental' and 'Asian' and he understands though this is offensive to a large number of people. **Yu You, SBU**, also said the term Oriental is very offensive and should be changed. **David Karaba, L.Ac, SBU**, thought it was premature to change the term so common to this medicine.

**JOAN CHANG MOVED AND STEVEN TAN SECONDED THE MOTION TO TAKE A WATCH POSITION ON AB 1117 AMENDING THE TERM 'ASIAN' IN LIEU OF 'ORIENTAL' INTO CURRENT LAW AND EVALUATE FINAL LANGUAGE AFTER AMENDED.  
AYES: SHARI ASPLUND, JOAN CHANG, KENNY CHERNG, STEVEN TAN AND JUSTIN TIN  
NOES: LARRY YEE  
MOTION PASSED**

**10. Misc. Proposed Regulatory Amendments to Title 16, California Code of Regulations**

**1. Amend Section 1399.465 – Citation Fines**

Ms. Nielsen explained that previously B&P Code Section 125.9 authorized an agency within the Department to issue a citation that could include an administrative fine of up to \$2,500. Section 125.9 was amended in 2003 to increase the amount of the fine to \$5,000. The Department agrees that the boards should maintain a citation policy that would generally impose a fine of up to \$2,500, but also agrees that where exceptional circumstances were present, a board should be allowed to impose a fine up to \$5,000.

**SHARI ASPLUND MOVED AND JOAN CHANG SECONDED THE MOTION TO ADOPT THE DEPARTMENT OF CONSUMER AFFAIRS' SUGGESTED CITATION REGULATION LANGUAGE TO INCREASE THE BOARD'S CITATION AND FINE AUTHORITY OF UP TO \$5,000 AND AUTHORIZE THE EXECUTIVE OFFICER TO PROCEED WITH A REGULATORY PROPOSAL TO DO SO.  
PASSED UNANIMOUSLY**

**2. Amend Article 6 - Miscellaneous Provisions – Complaint Disclosure**

Ms. Nielsen reported in September 2004 the Department distributed its revised complaint disclosure policy and draft regulatory language wherein the boards should establish and maintain a complaint history report to provide members of the public with complaint information that has been filed with the board against licensees. She explained the Board already provides such information as outlined in the policy to the public upon request and is on the Board's website. Mr. Chang informed the members that only two or three boards have moved this recommendation forward into regulation.

The Board determined to take a watch position on the Department's revised September 22, 2004 complaint disclosure policy in order to assess the position and actions being taken by other licensing boards.

**11. Public Comment Period:**

**Michelle Lau, L.Ac, CAOMA**, advised that CAOMA has carefully reviewed the Joint Committee and Little Hoover Commission reports as well as the responses of the Board to those reports and after a careful review CAOMA was still unclear as to what issues remains to be resolved. In an attempt to understand further the concerns of the Joint Committee and the dissatisfaction with the Board, CAOMA submitted a letter to Senator Figueroa requesting clarification with specificity and remaining unresolved questions or unresolved concerns relative to the Board.

**12. CLOSED SESSION: Pursuant to Government Code Section 11126 (c) (1) and (c)(3) to discuss/take action on examination administration and disciplinary actions.**

**13. Adjournment** - The Acupuncture Board meeting adjourned at approximately 4:30 P.M.

<p style="text-align: center;"><b>Friday</b> <b>March 11, 2005</b></p>
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**1. Call to Order and Establishment of a Quorum (S.Asplund, Chair)**

Chair Shari Asplund called the Acupuncture Board meeting to order at approximately 8:40 a.m. Roll was taken, a quorum was established.

LaVonne Powell, Board's new legal counsel, joined outgoing legal counsel Don Chang to allow for a smooth transition into legal oversight of the Board. Ms. Asplund commended Mr. Chang for his long-term dedication to the Board and excellent legal advice and guidance he has given over the years. She indicated he leaves a great legacy and would be missed.

**2. Administrative Business – (Discussion/Action)**

**a. Budget Updates**

**1. Attorney General's 2004 Rate Increases**

Ms. Nielsen reported, in April 2004 the Attorney General's office implemented a rate increase from the ten current rates (\$120/hour for Los Angeles and \$112/hour for the remainder of the state) to \$132/hour statewide, and paralegal rates from \$53/hour to \$91/hour. To fund the cost increases additional special fund expenditure authority was approved through the May 2004 Revision and the Board received a \$46,877 increase for Fiscal Year 2004/2005 to fund the rate increase. Effective July 1, 2004, Attorney General rates even further increased, which were addressed by the Department of Finance in Budget Letter 04-37 wherein the Board's budget was augmented by \$14,590 in Fiscal Year 2004/2005 and \$29,326 for Fiscal Year 2005/2006.

**2. Fiscal Year 2004/2005 Mid Year Report**

Ms. Nielsen reviewed the budget expenditure report ending December 31, 2004. She explained the different line items and mid-year expenditures reflected appropriately. Mr. Yee pointed out the budget allotment should be increased for printing costs. Ms. Nielsen explained the printing deficiency was due cost to reprint 45,000 copies of the revised consumer brochure, extra cost above the normal printing. She pointed out facilities operations was also deficient due to additional one-time costs to move the Board office. In addition, Ms. Nielsen further explained the budget and approval processes and authority needed to make fiscal changes to the Board's budget.

**3. 2005/2006 Budget Change Proposal - Office Assistant (Chinese Translator)**

**LARRY YEE MOVED AND STEVEN TAN SECONDED THE  
MOTION TO RATIFY THE BOARD'S AUGUST 4, 2004 BUDGET  
CHANGE PROPOSAL FOR FISCAL YEAR 2005/2006 AND  
ONGOING TO ESTABLISH A NEW PERMANENT OFFICE  
ASSISTANT CHINESE TRANSLATOR POSITION.  
PASSED UNANIMOUSLY**

**4. Fiscal Year 2005/2006 Proposed Governor's Budget Summary**

Ms. Nielsen reviewed the Governor's Budget Summary for the Acupuncture Board. She explained how the Summary reflects the Board's baseline budget and adjustments projected for the given fiscal year. Referring to the report provided the members, she pointed out where Budget Letter 04-37, discussed above for the increase in Attorney General's costs, was included in the list of adjustments and reflected in the revised appropriation totals.

### **3. Examination Business – (Discussion/Action)**

#### **a. July 30, 2004 Licensing Examination Performance Reports**

Ms. Nielsen reported there were 554 candidates who took the July 2004 licensing examination and 269 (48.6%) achieved a passing score of 129 or higher (129 of 175 possible points). Overall, the first time takers passing rate was 70%, while re-examinees was only 17%. She reported that the next California Acupuncture Licensing Examination, known as the CALE was administered on Thursday, January 13, 2005.

#### **b. 2004 Revised Examination Book Reference List**

Ms. Nielsen reviewed the 2004 CALE revised book reference list, implemented with the January 2005 examination. She explained the updating of this list was a collective effort of the Department of Consumer Affairs Office of Examination Resources (OER), Board approved schools and Subject Matter Experts (SMEs/licensees), which began in August 2002. All exam questions in the CALE item bank were cross-referenced to the new texts. The Board submitted the new list to all Board approved schools in October 2004 and guaranteed the schools that only questions found not to be in conflict with each other (i.e., old text versus updated text) would be used on the exam. Ms. Nielsen pointed out the seven new texts that were added to the reference list and the four old versions removed. She also stated that SME panels were reviewing additional books for possible inclusion onto the list, in addition the herb list currently used on the exam was being evaluated for possible revisions.

**Public Comment: David Karaba, L.Ac, SBU Learning and Assessment Coordinator,** recommended adding Dr. John Chen's excellent new *Chinese Medical Herbology and Pharmacology* text book to the CALE approved book reference list.

Ms. Nielsen encouraged the schools to notify the Board as new books are released that they feel should be added to the reference list. OER will continue conduct a review of newly released texts for inclusion onto the list.

#### **c. January 13, 2005 Licensing Examination Performance Reports**

Ms. Nielsen reported there were 545 candidates who took the January 2005 licensing examination and 254 (46.6%) achieved a passing score of 127 or higher (127 of 175 possible points). Overall, the first time takers passing rate was 63%, while re-examinees was only 22%. She reported the next CALE is scheduled for Wednesday, August 17, 2005.

### **4. Enforcement Business – (Discussion/Action)**

#### **a. Fiscal Year 2003/2004 Year End Enforcement Case Report**

Ms. Nielsen reported that in Fiscal Year 2003/2004, July 1, 2003 through June 30, 2004, 160 new complaints had been filed with the Board, 19 formal investigations are pending with Division of Investigation, and there are 39 open disciplinary cases and 14 open probation cases. The two highest percentages by categories are 30% unprofessional conduct and 43% criminal charges and convictions. The percentage for criminal charges and convictions have increased due to the tracking process on criminal convictions for exam candidates. However, after further evaluation and consideration tracking processes are being revised to more accurately reflect validated convictions versus presumed convictions.

#### **b. Fiscal Year 2004/2005 Mid Year Enforcement Case Report**

Ms. Nielsen reported that 90 new complaints had been filed with the Board in Fiscal Year 2004/2005 between July 2, 2004 and February 22, 2005. Sixteen formal investigations are pending with Division of Investigation, and there are 33 open disciplinary cases and 16 open

probation cases. The two highest percentages by categories are 35% unprofessional conduct and 38% criminal charges and convictions. For the new members, Ms. Nielsen explained violations that fall under unprofessional conduct are usually in areas such as unethical practice methods, misuse of titles, misadvertising, etc.

**5. Education Business – (Discussion/Action)**

**a. China International Medical University, Los Angeles, CA – Attorney General’s Proceedings to Withdraw Board Approval**

Ms. Nielsen reported the Board filed a case against China International Medical University in Los Angeles, with the Attorney General’s (AG) office early in 2004 (Case No. 1A-2204-66), however due to staff shortages in the AG’s office this case has been delayed due to being assigned and reassigned four separate times. The Board is still awaiting a review of the case documents submitted and if accepted by the AG’s office, for the Deputy Attorney General assigned to the case to schedule a hearing.

**b. Pending School Site Visits**

Ms. Nielsen reported the Academy for Five Elements in Hallendale, Florida, postponed the Board’s October 2004 scheduled site visit. They cited their program was not an integrated acupuncture and herbal program as required by California and advised this would be discussed with their board of directors and a determination rendered as to whether they wanted to continue their school approval process with California or withdraw their school application. Licensed member Kenny Cherng was assigned to perform the upcoming clinic review for the Stanton University in Garden Grove, California and Life University in Gardena, California when scheduled. Steven Tan volunteered to be a back-up licensed member to perform the clinic review at the Life University school if Mr. Cherng was unable to perform the visit.

**6. Set Remaining 2005 Acupuncture Board Meeting Dates and Locations**

The Board selected the remaining 2005 meeting and strategic planning session dates as follows:

Meeting - May 26-27, 2005 in Sacramento

Meeting - August 22-23, 2005 in San Francisco

Strategic Planning Session – October 17-18, 2005 in Monterey

Meeting - December 1-2, 2005 in Los Angeles

**7. Election of Officers for 2005**

Larry Yee nominated Shari Asplund as 2005 Chair and Joan Chang as 2005 Vice-Chair to the Acupuncture Board. **The nominations were unanimously moved by acclamation of the Board members.**

**8. Adjournment**

The Acupuncture Board meeting adjourned at approximately 10:15 A.M.